IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

THURSDAY, THE 7TH JUNE 2007 / 17TH JYAISHTA 1929

MFA.No. 561 of 2000()

OPMV.1115/1995 of MOTOR ACCIDENT CLAIMS TRIBUNAL, OTTAPALAM

APPELLANT - PETITIONER:

KUTTAPPA, S/O. KRISHNAN, AGED 25 YEARS, VATTAPARAMBIL HOUSE, NAGALASSERY AMSOM THOZHUKKAD DESOM, OTTAPPALAM TALUK.

BY ADV. SRI.O.P.NANDAKUMAR

RESPONDENTS - RESPONDENTS:

1. **SHAMSUDHEEN, AGED 28 YEARS, S/O. AHAMMEDUNNI, PANDARATHIL HOUSE, KOTHACHIRA AMSOM, POST KOTHACHIRA, VIA PERINGODE, PALAKKAD DISTRICT.**
2. **AHAMMEDUNNI, AGED NOT KNOWN, S/O. AHAMMEDKUTTY, PANDARATHIL HOUSE, POST KOTHACHIRA VIA PERINGODE.**
3. **THE ORIENTAL INSURACNE COMPANY LIMITED, BRANCH OFFICE, "U" BRANCHES BUILDING, GURUVAYOOR ROAD, KUNNAMKULAM.**

BY ADV. SMT.PREETHY KARUNAKARAN
SRI.ANISH S.AMBADY
SMT.BIJIMOL JOSE
SRI.M.JACOB MURICKAN

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 07/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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M.F.A. NO. 561 OF 2000

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Dated this the 7th day of June, 2007

J U D G M E N T

Petitioner in O.P(MV) No.1115 of 1995 on the file of the Motor Accidents Claims Tribunal, Ottapalam is the appellant. On 19.8.1993 petitioner was travelling in a Jeep bearing Reg. No.KRK-2984 driven by the first respondent. The vehicle met with an accident and the petitioner sustained injuries. He filed the O.P. claiming Rs.1,00,000/- as compensation. Though the owner and driver served with notice, they did not appear and contest. Insurer alone contested the matter and filed a written statement. Relevant portion of the written statement reads as follows:

> **"In this case, the driver of the vehicle was not holding valid effective driving licence. The owner of the vehicle had violated the policy conditions willfully by allowing a non-licensed person to drive the type of the vehicle. He is not entitled to get indemnity. The respondent company denies the liability specifically. The age, income and occupation of the petitioner are denied. The injuries, treatment period and expenditure shown**

> in the petition are also denied. The claims made under parts I and II are excessive and those claims are not allowable without actual proof and evidence. The allegations contained in columns 1 to 28 are denied. The petitioner should prove those allegations strictly before the court".

2. The Tribunal found that the petitioner was a foot-board passenger of the Jeep and as such he also contributed to the accident. The Tribunal fixed the liability in the ratio of 75:25. The Tribunal found that the petitioner is entitled to get a compensation of Rs.25,650/-. But the Tribunal awarded only Rs.19,238/- in view of the fact that the petitioner has contributed 25% negligence in causing the accident. Challenging the quantum of compensation awarded by the Tribunal, this appeal is filed.

3. Learned counsel appearing for the appellant has argued that the material on record shows that the appellant sustained a compound fracture of the medial malleolus and fracture of the lower part of right fibula. It was argued that the quantum of compensation awarded is very meagre. Finally it was argued that the finding of the Tribunal that the

appellant was also negligent in causing the accident is unsustainable in view of the decision rendered in **Bhaskaran v. Ravindran** (1990(1) KLT 607). In Bhaskaran's case (supra) a Division Bench of this Court, after considering the law on the point, held that a foot-board passenger cannot be considered to have contributed negligence to the accident. So the finding of the Tribunal that the petitioner had contributed 25% negligence to the accident is unsustainable. The same is liable to be set aside. The appellant is entitled to get the entire compensation amount. The Tribunal had found that the appellant is entitled to get a compensation of Rs.25,650/-. Though the Tribunal fixed the compensation due to the appellant at Rs.25,650/-, he was awarded only Rs.19,238/-, being 75% of the compensation. So the appellant is entitled to get Rs.6,412/- more. I have carefully gone through the quantum of compensation awarded under various heads. I do not find any reason to interfere with the same. Hence I confirm the same.

4. The next question arising for considering is who is liable to pay the compensation awarded. Shri Jacob Murickan,

learned counsel appearing for the third respondent Insurer has contended that the third respondent had produced copy of the policy before the Tribunal which is marked as Exhibit D1. It would show that the policy issued by the Insurer was only an act only policy. It was further contended that the Tribunal directed the Insurer to pay the compensation treating the injured as a third party. It was contended that in **United India Insurance Co. Ltd. Tilak Singh** (2006 (2) KLT 884) the Apex Court has held that the Insurer is not liable to pay compensation for a passenger in a transport vehicle unless additional premium is paid. It is true that the vehicle was covered with an act only policy. The contention of the Insurer which I have already extracted would show that the Insurer has not raised such a contention. Above all, in this case, the Tribunal had already found that the Insurer is liable to pay 75% of the compensation awarded. That finding has become final and conclusive since the Insurer has not challenged the same. So that finding will operate as res judicata. So I hold that the Insurer is liable to pay the compensation awarded in this case.

In the result, the appeal is allowed in part. An award is passed in favour of the appellant allowing him to recover a sum of Rs.6,412/- more with 7% interest from the date of petition till the date of recovery for the repayment. The third respondent Insurer is directed to pay that amount also. The appellant can withdraw the amount as and when the same is deposited.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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M.F.A. NO. 561 OF 2000

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J U D G M E N T

7TH JUNE, 2007